THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.9458, 9805, 10138, 10304, 10491, 10501, 10623, 10773, 10784, 10786, 10790, 10799 and 10829 of 2005

DATED:07.08.2006

BETWEEN

Kanigalla Venkata Subba Rao and others.

… Petitioners

and

The Vice Chairman, VGTM Urban Development Authority, Vijayawada, Krishna District and others.

… Respondents

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COMMON ORDER

PART-I

Introduction

This common Judgment shall dispose of these petitions involving common questions for consideration. There are mainly three categories of petitioners. First category of petitioners (W.P.Nos.9458, 10491, 10304 and 10773 of 2005) are the wholesale merchants of Vijayawada, who are also members of a society called

Vijayawada Wholesale Commercial Complex Members Welfare Society (Merchants Association, for brevity). The petitioners in this sub group are also members of their respective trade associations. Second category of cases is filed by the wholesale merchants, who are allegedly not members of the Merchants Association, but they are members of their respective trade associations. Vijayawada Daily Parcel Lorry Office Owners Welfare Association and other Lorry transporters filed third category of cases. The alleged restraint imposed on the right to carry on business by seizing their respective business places/shops brought them together for redressal. This was allegedly done by the authorities of the respondents, namely, Vijayawada Municipal Corporation (VMC); Vijayawada, Guntur, Tenali and Mangalagiri Urban Development Authority (hereafter called, the Urban Authority) and Commissionerate of Vijayawada City Police. All the businessmen in this group of writ petitions mainly allege that the high handed action of various authorities is not a reasonable restraint on the business right and therefore, impinges the fundamental right under Article 19(1)(g) of the Constitution of India . The petitioners are also aggrieved by the orders given by the respondent authorities to shift their wholesale business to Wholesale Commercial Complex constructed outside the city of Vijayawada.

PART – II

Back Ground Facts

Vijayawada is a historic city and more often than not dubbed as business capital of State of Andhra Pradesh. The wholesale business in various commodities is concentrated in the area, which is called I Town area. It is a part of the old city. The Government approved General Development Plan of 1969 under A.P.Town Planning Act, 1920 (Town Planning Act, for brevity), classifying the I Town area (surrounding famous Indrakiladri Hills) as mostly residential with few areas as light commercial zone. The effect of such plan is that no wholesale business is permissible in a residential-cum-light commercial zone. This was, however, followed more in breach. Over a period of time, large wholesale enterprises set up their shops in I Town. This naturally resulted various problems for the residents with regard to basic infrastructure facilities.

Vijayawada Urban Development Authority was constituted under A.P.Urban Areas (Development) Act, 1975 (Urban Development Act, for brevity). In 1980, the said authority adopted zoning regulations earmarking I Town area consisting of ward numbers 1 to 7 of the then Vijayawada Municipality as residential area/zone. This means wholesale business cannot be permitted in that area. The continued suffering by the community and peoples opinion for shifting the wholesale trade from I Town resulted in VMC and Urban Authority as well as Police initiating steps in that direction.

Shifting the wholesale market to less congested outskirts of the city was mooted. As a first step, it was thought to construct mega wholesale commercial complex. All the wholesalers – at least most of them; formed into Merchants Association and took up the task of acquiring the land, developing and constructing wholesale market complex. An extent of Acs.30.00 of agricultural land in R.S.No.498/2 in Gollapudi village falling within Vijayawada Urban Agglomeration was purchased by the Merchants Association. As the land was purchased for construction of wholesale market complex, VMC as well as Urban Authority

pursued with the Government to exempt the land from the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act, for brevity). Though the request for exemption was initially declined, due to timely intervention of well-meaning Members of Legislative Assembly and Members of Parliament, Government of Andhra Pradesh issued orders in G.O.Ms.No.330, dated 14.06.2002, granting exemption to the land from the provisions of the ULC Act with a direction to the Merchants Association to deposit a sum of Rs.1,90,90,000/- with Urban Authority towards infrastructural development charges. Several trade associations, on behalf of their members, agreed to take several plots or shops in the proposed market complex to be constructed by the Merchants Association. Be it also noted that as the property purchased was agricultural land, the Government in exercise of their powers under Section 12(2) of the Urban Development Act, notified, vide G.O.Ms.No.557, dated 31.12.2002, variations of the master plan for urban authority modifying the land use from agriculture to commercial use zone.

The Merchants Association having obtained necessary exemptions, modifications and permissions from various authorities completed the construction of wholesale commercial complex at Gollapudi. As part of the development was taken up by the Merchants Association itself, the Urban Authority refunded the amount deposited by the association earlier to enable the completion of other developmental works. The association appears to have completed 489 shops besides developing plots. These were allotted to various members of the association.

In spite of allotment of developed plots/shops, wholesale merchants of I Town area did not shift to market complex near Gollapudi. As there was continuous demand for shifting of the wholesale business to Gollapudi market, the merchant association addressed a letter on 23.07.2004 to the Commissioner of Police requesting time till 15.08.2004 to shift their shops to the new complex. As the entire administration was normally interested in solving the long pending problem in Vijayawada wholesale business area, a meeting was convened on 27.11.2004 at the Camp Office of District Collector. It was impressed upon all the trade associations, to immediately shift wholesale business to Gollapudi market. On 04.03.2005, Merchants Association convened meeting of Executive, tenders/construction sub committees and special invitees. It was resolved to stop the business in I Town area and shift the same to Gollapudi market complex before 31.03.2005. While enclosing a copy of such resolution, the General Secretary of Merchants Association addressed a letter on 11.03.2005 to the Vice Chairman of Urban Authority requesting to take necessary action in connection with shifting of the shops of the members from their locations in I Town to Gollapudi complex. Similar letter was addressed to the District Collector. A meeting was proposed at the Camp Office of the District Collector on 23.03.2005 and accordingly the association sent notice, dated 17.03.2005 to its members. After the meeting, the Merchants Association passed resolution to the effect that it shall be the duty of every member to shift the wholesale business to Gollapudi complex in public interest. Thereafter, presumably acting as per the request of the General Secretary of the Merchants Association in his letter, dated 11.03.2005, the Vice Chairman of Urban Authority sent a notice to the wholesale merchants in I Town area on 31.03.2005 informing each member that the wholesale business has to be shifted to Gollapudi within one week from the date of receipt of the said order. The notice also informs that if the business is not shifted, the District Administration would take necessary action for shifting the business of the wholesale merchants.

In all the writ petitions, it is alleged that on 19.04.2005 and 23.04.2005 the staff working in the office of the respondents went to respective business premises and pressurized them to shift to Gollapudi complex and threatened to seize/seal the shops if the shifting is not done. In W.P.No.10623 of 2005 filed by Vijayawada Daily Parcel Lorry Office Owners Welfare Association and its office bearers and in W.P.No.10799 of 2005 filed by Sri Rama Krishna Lorry Transport, it is alleged that on 26.04.2005 and 27.04.2005 the staff of Urban Authority and VMC sealed their offices by using police force. The writ petitions are therefore filed raising various grounds noticed infra.

In all the writ petitions, the respondents filed counter affidavits opposing the writ petitions. As we presently see, reliance is placed on the provisions of Hyderabad Municipal Corporations Act, 1955 (HMC Act, for brevity), which is made applicable to VMC, Urban Development Act and Zonal Regulations and Rules framed there under to sustain the action taken by the authorities to shift wholesale merchants to Gollapudi Market Complex. The allegation made by the petitioners has been denied and necessary reply affidavits are also filed in some of the cases. However, having regard to the background of the cases and the question that falls for determination, it is not necessary to refer to these counter averments in detail.

PART – III

Learned counsel for the petitioners, M/s.A.Rajasekhara Reddy, M.Brahma Reddy, M.P.Chandra Mouli, K.S.Murthy and Gangadhar Chamarthy submit that the object of removing decongestion in I Town area cannot be a ground to defeat the fundamental right of the petitioners under Article 19(1)(g) of the CoI. The petitioners have been carrying on the wholesale business for a long time and if they are now allowed to shift to the outskirts of the city that would deprive them the right to do business, which is not prohibited by law especially when most of the petitioners own shops in I Town area. A serious objection is taken to the use of force by the authorities especially police to seize and seal the shops for non-shifting to the new complex. It is also alleged that Urban Authority or VMC failed to give prior notice to all the wholesale businessmen in I Town area and therefore the action of the authorities is unsustainable. Lastly, it is urged that even if the wholesale business carried on in I Town area is in contravention of the provisions of Urban Act and Zonal Regulations, the authorities can only impose penalty and they cannot prohibit the business in the area. The counsel in some cases also urge that carrying on a particular business like mini lorry parcel service or retail business is not prohibited under the Zoning Regulations. The learned counsel for the petitioners in W.P.No.10304 of 2005, Sri A.Rajasekhara Reddy, submits that in the absence of any law, the right under Article 19(1)(g) of CoI cannot be denied. According to the learned counsel, there is no law, which empowers any authority to seize and seal the shops of the petitioners. He placed strong reliance on **State of Bihar v Project Utcha Vidya Shikshak**[1].

Learned standing counsel for VGTM Urban Authority, Ms.K.Aruna; the learned standing counsel for VMC, Ms.Jhansi and the counsel for fifth respondent, namely, Merchants Association, Mr P.Srinivas, while opposing the writ petitions made elaborate arguments, which is summed up as follows. Ward Numbers 1 to 7 of Vijayawada Municipality (now the Corporation) were included in I Town area, which according to general town plan published in 1969 was earmarked for residential and light commercial purposes. Therefore, no wholesale business is

permissible. After establishment of Urban Authority as per Hyderabad Urban Development Authority (HUDA) Rules and Regulations, which were initially adopted by Urban Authority in 1980 as well as the Zoning Regulations promulgated in 1993, I Town area is residential-cum-light commercial and as per these Regulations any wholesale business would be in contravention attracting various penalties. Learned counsel placed reliance on the provisions of HMC Act, Urban Development Act and Urban Authority Zoning Regulations and Rules, to which a reference is made infra. The learned counsel for Merchants Association submits that all the petitioners being members of Association are bound to abide by the decision taken by it in the presence of District Collector, Commissioner of Police, Vice Chairman of Urban Authority and the Commissioner of VMC. According to the learned counsel, having given undertaking to shift their businesses to Gollapudi market complex and having avoided the same, the petitioners are not entitled to seek relief from this Court under Article 226 of the Constitution of India. Indeed, the counsel submits that the petitioners who are members of the Merchants Association have no *locus standi* to file the writ petitions, as they participated in the meetings of the society. He submits that even now there are hundred shops vacant in Gollapudi market complex and the Association is willing to allot these shops to non-members. He also submits that members of Daily Parcel Lorry Association were also allotted shops in Gollapudi market complex and that all of them agreed to shift to the new market. Learned counsel placed strong reliance on **Daman Singh v State of Punjab**[2], **Dr.A.L.N.Prasad v State of Andhra Pradesh**[3], **A.P.Gunnies Merchants Association, Hyderabad v Government of Andhra Pradesh**[4], **M.C.Mehta v Union of India**[5], **State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat**[6] and **Krishna Kumar v Municipal Committee**[7].

The learned counsel also submits that if the State resorts to certain steps keeping in view the larger interest of the public and community, the same is justifiable under Directive Principles of the State Policy. Therefore, it is reasonable restriction imposed on the wholesale merchants of I Town area to shift to outskirts of the city, which cannot be faulted. Finally, the learned counsel placing strong reliance on the latest Judgment of the Supreme Court in **M.C.Mehta II v Union of India**[8] submits that the authorities have power to seize and seal the shops especially when the Merchants Association, which is espousing the cause of wholesale merchants itself requested the authorities to take necessary steps to compel the merchants to shift to the new market complex.

PART – IV

REGULATING ENACTED LAW

The broad question that requires to be considered is whether the respondent authorities can compel the petitioners to shift from out of I Town area on pain of facing coercive action. At the outset, relevant provisions of the relevant statutes may be noticed to know the statutory environment and legal dispensation dealing with the rights of the property owners in the Municipal area and the duties and powers of the authorities entrusted to enforce the law. The relevant Statutes, Rules, Regulations and Bye-laws, to which a reference requires to be made, are as follows. (i) Hyderabad Municipal Corporations Act 1955; (ii) Municipal Corporation

of Hyderabad (MCH) (Layout) Rules 1965; (iii) Municipal Corporation Building Bye-laws 1981; (iv) A.P. Municipalities Act 1965 (Municipalities Act, for brevity); (v) A.P. Municipalities (Layout) Rules 1970; (vi) A.P. Town Planning Act 1920; (vii) A.P. Urban Areas (Development) Act 1975 (Urban Development Act); (viii) Zoning Regulations to Master Plan of Vijayawada Municipality 1980; and (ix) Zoning Regulations for VGTM UDA* Region, 1993.

Hyderabad Municipal Corporations Act 1955

Vijayawada city was long back constituted as Municipality under A.P. Municipalities Act, 1965 (the Municipalities Act, for brevity). The State Legislature enacted Vijayawada Municipal Corporation Act in 1981 (for short, VMC Act). By reason of Section 3 thereof, the local area included in Vijayawada Municipality shall be deemed to be an established Municipal Corporation by the name of VMC. Section 7 of VMC Act extends and applies the provisions of HMC Act *mutatis mutandis* to VMC as if the provisions of HMC Act formed part of VMC Act. Therefore, all the provisions of HMC Act and all the rules and regulations thereof are applicable to Vijayawada Corporation. There is also no dispute that requisite statutory orders are already promulgated by the Government of A.P. adopting and applying all the bye-laws, rules and regulations made in relation to HMC to Vijayawada Corporation.

The HMC Act contains twenty three (23) Chapters and twenty two (22) schedules i.e., A to V. Chapter XII (Sections 428 to 463) contains Building Regulations and Chapter 13 deals with Development Regulations. Apart from this, in exercise of their powers, the Government of A.P. promulgated Rules touching upon various aspects of Municipal Administration and MCH promulgated different sets of bye-laws including land layout bye-laws and building bye-laws. By reason of the notification issued by the Government of Andhra Pradesh vide G.O.Ms.No.661, Municipal Administration and Urban Development, dated 02.11.1993 under Section 7(2) of VMC Act, the HMC Building Bye-laws shall apply to VMC. A brief reference to some of the Provisions, Rules and Byelaws is made infra.

The words 'building', 'land' and 'market' are defined in dictionary clause of HMC Act as under.

> 2(3) 'building' includes a house, out-house, stable, latrine, godown, shed, hut, wall, fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever;
>
> 2(28) 'land' includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street;
>
> 2(32) 'market' includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, livestock, food for livestock, meat, fish, fruit, vegetables, animals intended for human consumption or any other article of human food whatsoever with or without the consent of the owner of such place, notwithstanding that there may be no common regulation of the concourse of buyers and sellers and whether or not any control is exercised over the business carried on, in or on the persons frequenting such place by the owner thereof, or any other person.

A conspectus of Chapter XII of HMC Act containing "Building Regulations" is as follows. Every person, who intends to erect or re-erect a building, has to issue a notice of intention to the Commissioner. Such notice should specify the position of the building to be erected, the description of the building, the purpose for which it is

intended and its dimensions. Sub-section (2) of Section 428 of HMC Act defines the term 'to erect or re-erect a building' means *inter alia* conversion of a building into a stall, shop, warehouse or godown not originally constructed for use as such or vice versa. It is also competent for the Commissioner to require the submission of plans drawn by a licensed surveyor and such additional information as necessary regarding the sections of every floor of the building intended to be erected or re-erected. Even while undertaking the work of alteration or additions to the building, a notice has to be given to the Commissioner and the non-compliance would entail any penal action against the person contravening the provisions. It is only after obtaining permission granted under Section 437 of HMC Act that a person can commence construction strictly in accordance with the building plan as approved by the Commissioner. Needless to point out that every building plan should be strictly in accordance with the building bye-laws regarding the height, dimensions, set back, ventilation, sanitation and the like. Even after completion of the building, a person is required to inform the Commissioner the completion of the building and then occupy the building constructed. Section 441 of HMC Act prohibits the use of a building for any purpose for which it was not intended nor approved earlier. The same reads as under.

> **441. Building not be converted to other purposes without the permission of the Commissioner:-** No person shall, without the written permission of the Commissioner-
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> (a) use or permit to be used for human habitation any part of a building not originally constructed or authorized to be used for that purpose; or
>
> (b) convert into, or use, or permit to be used, as a chawl or building intended to form a range or separate rooms for lodgers, a building not originally designed or
> authorized to be so used.

Sections 442 and 443 of HMC Act are relevant and are read as under.

> **442. Buildings of human habitation not to be used as godown, etc:-** No person shall without written permission of the Commissioner or otherwise than in conformity with the terms of such permission use or permit to be used any building or any part of a building originally constructed, or authorized to be used for human habitation as a godown, warehouse, workplace, factory, stable or a motor garage.
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> **443. No alterations to be made in buildings for human habitation without written permission of Commissioner:-** No person shall without the written permission of the Commissioner or otherwise than in conformity with the terms of such permission make any alteration or cause any alteration to be made in an existing building originally constructed or authorized to be used for human habitation for the purpose of using it or causing it to be used as a godown, warehouse, workplace, factory, stable or motor garage.

The above three provisions are couched in negative language and suggest that a building constructed for human habitation cannot be converted into a commercial purpose or into factory, warehouse etc. The conversion into a godown, workplace, motor garage is also prohibited. Section 450 of HMC Act confers powers on the Commissioner to cancel the permission granted on the ground of material misrepresentation or fraudulent statement by the person who obtained permission. For instance, if permission is obtained for construction of residential house and construction was made for altogether a different purpose, it is always

open to the Commissioner to cancel the permission and take such other action. Sections 452 to 454 of HMC Act provide for the procedure regarding the proceedings to be taken in respect of a building, which is constructed or used in contravention of the building plan. This power includes pulling down the illegally constructed house. Section 636 of HMC Act provides for such power and reads as under.

> **636. Work or thing done without written permission of the Commissioner to be deemed unauthorized:-** (1) If any work or thing requiring the written permission of the Commissioner under any provisions of this Act, or any rule, regulation or bye-law is done by any person without obtaining such written permission or, if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorized and subject to any other provision of this Act the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone as the case may be, by the person so carrying out or doing if the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisitions of the Commissioner.
>
> (2) If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner as the case may be.

Sub-section (1) of Section 636 of HMC Act is worded in such broad terms that it confers vast power on the Commissioner of the Corporation to direct a person to remove, pull down or undo anything, which was done without obtaining any permission. When the Commissioner takes action under Section 636 of HMC Act, it not only obliges the owner of the premises but the tenant as well and if such person fails to comply with the notice under Section 636(1) of HMC Act, it shall be open to the Commissioner to remove or alter such work or undo such thing duly collecting expenses from the owner. Therefore, the provisions of HMC Act confer power on the Commissioner to set right anything which is done illegally or in contravention of the permission granted by the Commissioner.

Municipal Corporation of Hyderabad (Layout) Rules 1965

These Rules are made by the Government in exercise of powers under Section 585(1) of HMC Act. They deal with the procedure for sanctioning of layout and the conditions which a layout plan must satisfy. Rule 10 provides that the roads proposed in the layout shall have width with reference to the length as provided in the development plan and that the roads, open spaces, parks and playgrounds earmarked in the layout shall automatically stand transferred to the Corporation after the layout is approved. Rule 12 provides that, “no residential plot or part thereof shall be utilized or permitted to be utilized for construction of buildings for non-residential or commercial purposes”. It may be mentioned that in case the area in the layout is earmarked for residential purpose and subsequently the same is used for construction of non-residential/commercial building, it is always open to the Commissioner to take action under Section 450 read with Section 636 of HMC Act.

Municipal Corporation Building Bye-Laws 1981

Section 586 of HMC Act confers power on the Corporation to make Bye-Laws in conformity with the provisions of HMC Act and subject to confirmation by the Government under Section 589 of HMC Act. In Building Bye-Laws made by MCH,

powers are conferred on the Commissioner to sanction building permission, to enforce the bye-laws to stop construction which is in contravention of the Rules and prevention of damage by reason of unsafe buildings. These bye-laws require the approval of the site plan as well as building plan, the specifications for various types of rooms in the building, roofs, boundary wall exits, structural safety, plumbing and sewage arrangements, set back to be provided for the building etc. These specifications are not uniform to all buildings and they differ from building to building depending on the purpose to which a building is put to use. For instance, the special requirements for an industrial building are different from a building intended for use as hotel/lodging house/restaurants. If a person after obtaining approval of the site plan and building plan, commits breach under bye-law 11, it shall be competent for the Corporation to take suitable action including demolition of unauthorized work as decided by the competent authority. Bye-law 11 reads as under.

> **11. Cancellation of permission for Building Work.**
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> **11.1.** If at any time, construction is done not according to sanctioned plan, the Authority may by written notice as specified in Appendix-F direct the permit holder (owner) to stop further construction and cause anything done contrary to the sanctioned plan to be amended so as to be in conformity with the said plan.
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> **11.2. If at any time, after permission to proceed with any building work has been given the Authority is satisfied that such permission was granted consequence of any material in representation of fraudulent statement contained in the application given or information furnished, the authority may cancel such permission by serving notice as per Appendix and any work done thereunder shall be deemed to have been done without permission.**
>
> **11.3.** Offences and penalties – Any person who contravenes any of the provisions of these bye-laws or any requirements or obligations imposed on him by virtue of these bye-laws or who interferes with or obstructs any person in the discharge of his duties shall be guilty of an offence and upon conviction shall;
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> **(a) be punished by a fine as fixed by the Authority;**
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> **(b) take suitable actions including demolition of unauthorized work as decided by the Authority;** and
>
> (c) take suitable action against licensed technical personnel which may include cancellation of the licence and debarring him from further practice for a period of one year.
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> (emphasis supplied)

A.P.Municipalities Act 1965

Chapter IV deals with building regulations. By reason of Section 230, building rules contained in Annexure III of the Act govern construction and re-construction of the buildings and structures in the municipal areas. As per Section 209, any person intending to construct building shall have to make an application to the Commissioner together with approved site plan, building plan, copy of title deed and such other documents that are required under the rules and the bye-laws. Section 210 deals with approval of the site and mandates that the Commissioner shall not grant permission unless the site on which construction is to be made is approved. Section 211 prohibits any person from making any construction unless the Commissioner grants permission for execution of the work. Here, the building rules in Schedule III may also be briefly noticed.

The Building Rules in Schedule III form part of this Act and as per the legislative intent. Rule 2 thereof enumerates the documents, which should accompany an application for permission to construct a building. Rule 4 thereof stipulates that Commissioner may withhold permission in certain cases. The other

rules deal with application, nature of the site, super-structures, height and size of the room, lighting and ventilation, drains and sanitary conveniences and stair cases etc. Section 229 of the Act enables to exempt any building from the provisions of Chapter IV other than Section 215 and specifically confers power on the Commissioner to decide cases of temporary structures like temporary huts of sheds for stabling, for watching crops, for storing tools or materials etc.

Reverting to the Building Rules, Rule 18 confers power on the Government either *suo motu* or on application to exempt any building or class of building from the operation of all or any of the provisions of the rules and Sections 212 and 213 prescribe the period within which the Commissioner may approve or disapprove and the Commissioner may grant or refuse permission to execute the work.

Under Section 214 of HMC Act, if within sixty days after receipt of an application for approval of the site or permission for construction of a building, if the Commissioner fails to pass orders refusing approval/permission, as the case may be, such approval or permission shall be deemed to have been given and it is open to the applicant to proceed with the construction without contravening the provisions of the Act, Building Rules or bye-laws. However, it must be kept in mind that by reason of Section 210 of HMC Act, unless and until the site on which a building is to be constructed is approved, the Commissioner cannot grant any permission for construction of building. Therefore, unless and until an applicant has prior approval of the site, he cannot take advantage of Section 214 of HMC Act. To say in other words, if a person has already applied for approval of the site and the Commissioner approved the site, then only the person can take advantage of Section 214 of HMC Act. A person cannot claim that he has deemed permission and, therefore, the construction made or is to be made is not illegal. He has to prove that the Commissioner has already approved the site after making inspection. The approval of the layout should not be confused with the approval of the site. There could be a difference between the two. The Commissioner may refuse to approve the site if it is not in accordance with the Building Rules in Schedule III, especially Rule 5 thereof.

Section 215 of HMC Act reads as under.

> **215. Grounds on which approval of sites for or licence to construct or reconstruct building may be refused:-** The only grounds on which approval of a site for the construction or reconstruction of a building may be refused are the following, namely:-
> (1) that the work, or use of the site for the work or any of the particulars comprised in the site plan, ground plan elevations, sections or specification would contravene some specified provision of any law or some specified order, rule, declaration or bye-laws made under any law;
> (2) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or bye-laws;
> (3) that any of the documents referred to in Section 209 have not been signed as required under rules or bye-laws;
> (4) that any information or documents required by the Commissioner under rules or bye-laws have or have not been duly furnished;
> (5) that streets or roads have not been made as required by Section 184.
> (6) that the proposed building would be an encroachment upon Government or municipal land.
>
> Whenever the Commissioner refuses to approve a building site for a building or to grant permission to construct or reconstruct a building, the reasons for such refusal shall be specifically stated in the order.

If the site plan or building plan contravenes any provisions of any law, it is

always competent for the Commissioner to refuse permission to construct or re-construct a building. Further, under A.P.Municipalities (Layout) Rules, read with Section 184 of Municipalities Act, area earmarked in the layout for one purpose cannot be allowed to be used for construction for other purposes. If permission is obtained for residential building on an area in the layout intended for residential purpose but the same is converted to non-residential use, there would be a clear violation attracting penal action under Section 228 of Municipalities Act. Be it noted that under Rule 9(5) of the Municipalities Layout Rules, no plot in a layout shall be utilized for any purpose other than the purpose for which the layout is approved and sanctioned. No plot shall be used in contravention of the Zoning Regulations. Such prohibition operates even against municipality. Under Rule 10(1) of Municipalities Layout Rules, the owner of the layout is required to transfer to municipality, such area which is to be set part for common use, and under Rule 10(4) even Municipality cannot use the land transferred for any purpose other than that for which it is so transferred.

A.P.Town Planning Act 1920

Town Planning Act aims at planned development of towns so as to secure to their inhabitants sanitary conditions amenities and conveniences. Chapter II deals with Town Planning Scheme and Chapter III contain provisions providing for the procedure for approval of town planning scheme. Section 9 of Town Planning Act requires the municipal council to pass a resolution to prepare a scheme within the municipal area and Section 11 requires publication of such draft scheme within twelve months from the date of the resolution. Section 13 stipulates that every draft scheme shall contain the plan showing lines of existing and proposed streets, ownership of all lands and buildings in the area to which the scheme relates, area of all such lands whether public or private, description of the details of the scheme and other particulars as may be prescribed by the State Government. The draft scheme so prepared as per the resolution of the municipal council has to be sanctioned by the Government which has to necessarily call for objections before according sanction. When once the scheme is published under sub-sections (5) and (6) of Section 14, under Section 19 it shall be the duty of the responsible authority as defined under Section 2(8) to enforce the scheme if necessary by removing or pulling down any building which contravenes the scheme and execute any work if there is a delay on the part of the owner to do so. Section 18-B of Town Planning Act enables classification of land or building under industrial, commercial, residential, agricultural or conservation and recreational or miscellaneous category. When once the scheme is approved/sanctioned by the Government, the same cannot be varied or altered except in accordance with the procedure provided under Section 15 of Town Planning Act.

The State Government is alone competent to vary or revoke the scheme sanctioned under Section 14. In the exercise of such power by the State Government under Section 15, it shall be incumbent to invite objections or suggestions by publishing the draft of the variation. The municipal council or a person affected by such variation can make objections or suggestions, which shall have to be considered by the Government before issuing notification under Section 15(2) of the Act.

A.P. Urban Areas (Development) Act 1975

To begin with, town planning and town improvement as a necessary step to ensure proper amenities, conveniences and sanitary conditions to the residents of urban areas (usually larger clusters of human inhabitation) in Municipalities, Major

Panchayats and the like was thought of almost hundred years ago in India. As a result of this, Town Planning Act was enacted, to regulate development in urban areas, construction of streets, roads, communication, to plan waste disposal facilities, water facilities, transport facilities, lighting facilities and the like. Even after the enactment of Municipalities Act, the town planning and town improvement was exclusively entrusted to officers and authorities directly under the control of the State Government and were independent of elected municipal bodies. Insofar as larger Municipal Areas (Metropolitan areas) are concerned, HMC Act contained Chapter XIII with a heading "Planning and Development". This Chapter contained sixteen (16) sections dealing with the power of the Government to declare any area of the city to be development plan area, to approve improvement schemes for such area, to alter changes in the schemes, the right to acquire land for implementation of such schemes and the like.

During the first twenty five years after Independence, there was considerable increase in migration of people from rural areas to urban areas and large scale development of land for purposes other than agriculture. This required a special legislation exclusively to deal with development of urban areas in the State, that is to say, Municipal Corporation areas and other areas peripheral to Corporation area. Urban Development Act was legislated providing for the constitution of Urban Development Authority for an area including the Municipal area and other areas in the vicinity of such Corporation. The whole idea was to entrust the town planning and town improvement to duly constituted expert statutory body functioning democratically. The local authorities within the area of Urban Development Authority like Municipalities, Municipal Corporations and Panchayats were made to participate in the development of the towns and urban areas subject to final say of Urban Development Authority. Even if there is any conflict in the Rules, Regulations and Decisions by local bodies, the Rules, Regulations and Decisions given by Urban Development Authority were taken overriding effect.

The power to prepare master plan, define various zones for the purpose of development and preparing zonal development plan containing the said land and land use plan is conferred on the Urban Development Authority (see Sections 6 and 7 of Urban Development Act). Sub-section (2) of Section 7 contemplates the land for public use and private use and specification of the land for various purposes like residential, recreation, non-residential, commercial etc. Section 13 empowers the State Government to declare development areas and the consequences that would follow if development is taken up in contravention of the development plan. Sections 15 and 17 are relevant and read as under.

> **15. Use of the land and buildings in contravention of plans:-** After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:
>
> Provided that it shall be lawful to continue to use upon such terms and conditions as may be determined by regulations made in this behalf, any land or building for the purpose for which, and to the extent to which, it is being used on the date on which such plan comes into force.
>
> **17. Plans to stand modified in certain cases:-** (1) Where any land situated in any development area is required by the Master Plan or Zonal Development Plan to be kept as an open space or unbuilt upon of is designated in any such plan as subject to compulsory acquisition, if at the expiration of ten years from the date of operation of the plan under Section 10, or where such land has been so required or designated by any amendment of such plan, from the date of operation of such amendment,

the land is not compulsorily acquired, the owner of the land may serve on the Government a notice requiring his interest in the land to be so acquired.

(2) If the government fail to acquire the land within a period of a six months from the date of receipt of the notice, the Master Plan or Zonal Development Plan, as the case may be, shall have effect after the expiration of the said six months, as if the land were not required to be kept as an open space or unbuilt upon or were not designed as subject to compulsory acquisition.

Section 15 prohibits any person to use any land in specified zone (either as per master plan or zonal development plan) to use such land or building otherwise than in conformity with such plan. However, if a land or building was already being used for a given purpose prior to coming into force of the master plan or zonal plan, it shall be lawful to continue to use for such purpose subject to terms and conditions as may be determined by the Regulations. For instance, if prior to establishment of Urban Development Authority or prior to notifying master plan or zonal development plan for an urban area, if a land is being used for commercial purpose in accordance with town plan as approved by the Director of Town Planning under Town Planning Act, after coming into force of the Zonal Regulations or Rules under the Urban Development Act, no person can continue to use the land for the purpose it is being used, if it is not provided as seen in the Zonal Regulations. By reason of the proviso to Sections 15 and 17 and by reason of Section 17 of Urban Development Act, the town plan, if any shall stand modified by the Zonal Development Plan and no person is entitled to use the land ignoring Zoning Regulations.

Chapter X deals with penalties for contravention of the provisions of Urban Development Act and Zonal Regulations. Section 40 empowers the urban authority to enter into any land or building for the purpose of making enquiry inter alia to ascertain whether any land is being used or has been developed in contravention of the master plan or zonal development plan or in contravention of any of the conditions subject to which permission was granted. Section 41 deals with penalties. A person, who contravenes the master plan or zonal development plan or Section 13 is liable to punishment with fine which may extend to Rs.10,000/- and in the case of continuing offence with further fine of Rs.500/- for every day during which the offences continues. If any person contravenes Section 15, such person shall be liable to be punished with fine, which may extend to Rs.5,000/- and in the case of a continuing offence, an amount of Rs.500/- per day. Section 42 contemplates removal of the development at the expense of the person, who contravened the provisions of this Act or master plan after following procedure laid down therein. Section 43 vests the urban authority, the power to stop unauthorised development, which reads as under.

43. Power to stop unauthorized development:-

(1) Where any development in any area has been commenced in contravention of the provisions of Section 13 or without the permission, approval or sanction referred to in that section or in contravention of any condition subject to which such permission, approval or sanction has been granted.

(i) in relation to development area, the Authority or any officer of the authority empowered by it in this behalf;

(ii) in relation to any other area specified in sub-section (7) of Section 13 within the local limits of a local authority, the competent authority thereof; may in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be

discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

(2) Where such development is not discontinued in pursuance of the order under sub-section (1), the Authority or the officer of the Authority or the competent authority, as the case may be, may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3) If any development in an area specified in sub-section (7) of Section 13 has been commenced in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 13 or in contravention of any condition subject to which such permission, approval or sanction has been granted and the competent authority has failed to make an order under sub-section (1) or, as the case may be, a requisition under sub-section (2), within the time that may be specified in this behalf by the Director of Town Planning, the Director may, after observing such procedure as may be prescribed, direct any officer to make the order or requisition as the case may be, and that officer shall be bound to carry out such direction; and the order or direction made by him in pursuance of the direction shall be complied with accordingly.

(4) After the requisition under sub-section (2) or sub-section (3) has been complied with, the Authority or the Competent Authority or the officer to whom the direction was issued by the Director under sub-section (3), as the case may be, may depute, by a written order, a police officer or employee of the Authority or local Authority concerned to watch the place, in order to ensure that the development is not continued.

(5) Any person failing to comply with an order under sub-section (1) or as the case may be, under sub-section (3), shall be punished with fine which may extend to two hundred rupees for every day during which the non-compliance continues after the service of the order.

(6) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of any development under Section 42 after discontinuance of the development under this section.

(7) The provisions of this section shall be in addition to, and not in derogation of any other provision relating to stoppage of building operations contained in any other law for the time being in force.

(emphasis supplied)

A reading of sub-sections (2) and (4) of Section 43 of the Urban Development Act emphasised hereinabove would show that very vast power is conferred on the urban authority to remove, stop and prevent unauthorised development or to take any such steps to ensure that the development is not continued or may depute a Police Officer to watch the place to dissuade further development. For this purpose, the authority can require any police officer to remove the person by whom the development has been commenced and continued. By reason of sub-section (7) of Section 43, the power to stop unauthorised development is not in derogation of the power to punish with penalty or to compound offences under Section 46 of the Urban Development Act, the Rules and Regulations.

Zonal Regulations

VGTM Urban Authority was constituted under Section 3(1) of Urban

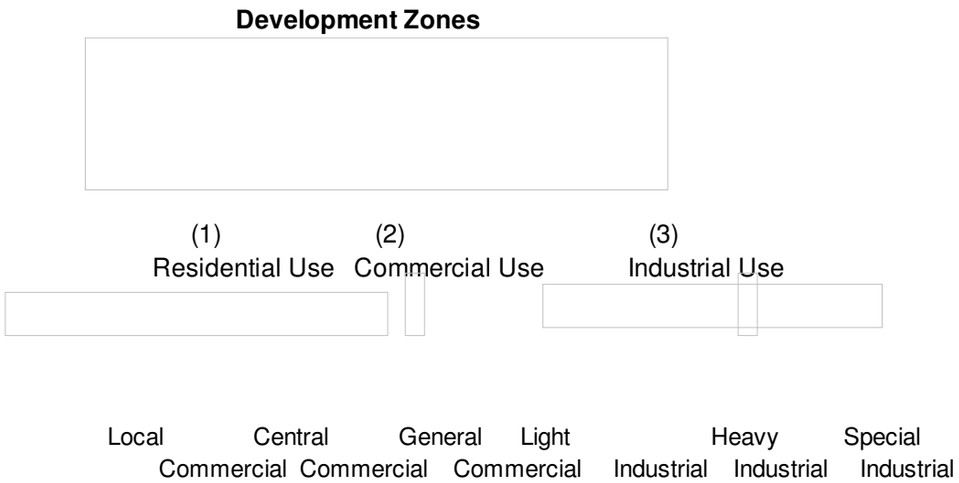
Development Act in respect of the development area declared under Section 13(1) of the Urban Development Act; vide G.O.Ms.No.695, dated 09.11.1977, and the authority was constituted by G.O.Ms.No.1007, dated 07.12.1978. Section 2(o) defines urban area means the area comprised within the jurisdiction of Municipal Corporation of Vijayawada and Guntur or any municipality constituted under Municipalities Act, 1965 and such other area declared to be urban area by the Government. Hitherto Vijayawada, Guntur and Tenali were Municipalities governed by Municipalities Act. Before the establishment of VGTM Urban Authority, the town planning and town improvement for these urban areas was regulated by master plan published by the Government under Section 14 of the Town Planning Act. After Urban Development Act came into force in exercise of the powers under Section 12(1) of the said Act, the Government of Andhra Pradesh issued Zoning Regulations to master plan of Vijayawada Municipality (hereafter called, Municipal Zoning Regulations) vide G.O.Ms.No.724, dated 04.11.1980. Similar Zoning Regulations to the master plan of Guntur Municipality and Zoning Regulations for the master plan of Tenali Municipality were issued vide G.O.Ms.No.290, dated 05.05.1977 and G.O.Ms.No.967, dated 21.11.1978 respectively.

Government promulgated Zoning Regulations for VGTM Urban Authority called as VGTM Urban Development Authority (Development Area) Zoning Regulations, 1993 vide G.O.Ms.No.718, dated 30.11.1993. There are 39 regulations and 5 annexures in this instrument. By reason of Regulation 38, all the Rules, Bye-laws and Zoning Regulations to master plan, made in respect of erstwhile municipal areas of Vijayawada, Guntur and Tenali shall stand suspended if they are contrary to VGTM Urban Authority Regulations (hereafter called, Urban Authority Zoning Regulations). It is therefore necessary to refer to Zoning Regulations for the master plan of Vijayawada Municipality, which is now part of VGTM Urban Area.

Municipal Zoning Regulations

Regulation 1 (General) declares that the implementation of Development Plan or General Town Planning Scheme (GTP Scheme) shall be in accordance with Zoning Regulations and the following zones are identified.

Development Zones



N.B:

The other two zones are :

Public and Semi Public Use and Agricultural Use

What is the scope of development in residential use zone. As per the Regulations, the uses permitted and uses prohibited in the residential zone are as follows.

I. RESIDENTIAL USE ZONE:

USES PERMITTED SUBJECT TO OVERALL CONFORMITY WITH THE GTP SCHEME (MASTER PLAN)	USES PERMISSIBLE ON APPEAL TO URBAN DEVELOPMENT AUTHORITY)	USES PROHIBITED
(1)	(2)	(3)
Dwellings, detached, semidetached tenements, flats, dispensaries, community hall, post-office, Police Station, Fire Station, Electric sub-station, nursing home, schools offering general educational courses, play grounds and play fields, libraries, gardens, plant nurseries and customary home occupations and cottage industries not involving the use or installation of any machinery driven by power or any kind and which do not create noise, vibration smoke, dust, etc., provided that such home occupations and cottage industries shall not be permissible in a tenemental dwelling or flat or detached houses, swimming pool, boarding houses, bachelor quarters, hotels, bachelor quarters, hotels, clubs and cultural and philanthropic associations of non-commercial nature, professional establishments satisfying the requirements of the home occupations.	Retail shops, petrol filling stations and installation of machinery incidental to shopping or running of customary home occupation and cottage industries permissible under accessory use clearly incidental to residential use which will not create nuisance or hazard. Temples, mosques and other religious buildings, Municipal, State and Central Government uses hospitals, according to standards specified and measures in terms of the population they are to serve. Cemeteries, multipurpose or junior Technical Schools, not giving rise to smoke noise, or other nuisance, auditoria, public assembly halls, sports stadia, transient visitors camp, taxi and scooters stand, bus terminals, railway platforms for goods and passengers, public utility buildings, hospitals not treating contiguous diseases, or mental patients.	All uses not specifically herein permitted including the following: quarrying of gravel, stone, clay, sand etc., except for the purpose of development of the area commercial entertainment like touring in cinemas, circus and other shows. Polytechnic and Higher Technical Institutions requiring machinery etc., irrigated machinery farms, sewage farms.

II. COMMERCIAL USE ZONE:

As seen earlier, commercial use zone is divided into local commercial; central commercial and general commercial. The following table shows the uses that are permitted in light commercial zone, uses that are permitted with the permission of the competent authority and uses that are prohibited.

LOCAL COMMERCIAL

USES PERMITTED SUBJECT TO OVERALL CONFORMITY WITH THE G.T.P. SCHEME (MASTER PLAN)	USES PERMISSIBLE ON APPEALTO URBAN DEVELOPMENT AUTHORITY	USES PROHIBITED
(1)	(2)	(3)
Retail shops, dwellings of employees working in the area, residential hotels, restaurants and their accessory uses, professional business establishments, schools offering general educational courses, libraries, offices and banks, parks, play grounds and other recreational uses, public assembly halls, cultural centers, social and welfare institutions, clinics and nursing homes not treating contiguous diseases or mental patients, public utility buildings, temples, mosques, churches and religious buildings without service stations. Flour mills and coffee grinders, dhall grinders, oil rotaries not exceeding 10 HP. Petrol filling stations.	Service industries not involving manufacture nor requiring extensive land, petrol pumps with service stations, clean industries with upto 4 employees and not exceeding 15 HPEM coal and timber storage, taxi and scooter stands, transport terminals etc. Government offices, research and social service institutions, circus and public utilities, multipurpose or junior technical schools.	All uses not specifically mentioned herein including the following: quarrying of gravel, sand, clay and stone except for the purpose of development of the area. Agricultural use, except nurseries, contractor's plants, ware housing and storage of perishable and inflammable commodities.

CENTRAL COMMERCIAL

USES PERMITTED SUBJECT TO OVERALL CONFORMITY WITH THE G.T.P. SCHEME (MASTER PLAN)	USES PERMISSIBLE ON APPEAL TO THE URBAN DEVELOPMENT AUTHORITY)	USES PROHIBITED
(1)	(2)	(3)

Multi-stored dwellings and apartment houses, all types of retail business, department stores, hotels and restaurants and their accessory uses, professional business establishments, libraries, offices, banks, financial institutions, theatres, cinemas and public assembly halls, cultural centers, social and welfare institutions, commercial entertainment of a transient nature, service industries not exceeding 15 HPEM, petrol filling stations with garage and service stations, public utility buildings, parks, play grounds, temples, mosques, churches and other religious buildings. *(without service stations)	Wholesale markets, newspaper offices with printing presses taxi and scooter stands, nursing homes, hospitals and medical centers clean industries not exceeding 20 HPEM, sport stadia, transport terminals for both goods and passengers, colleges, technical and research institutions, polytechnics and swimming pools.	All uses not specifically mentioned herein including the following: Agricultural use of all types, quarrying of gravel, sand, clay and stone except for the purpose of development of the area. Contractors plant, ware housing and storage of perishable and inflammable commodities.

GENERAL COMMERCIAL

USES PERMITTED SUBJECT TO OVERALL CONFORMITY WITH THE G.T.P. SCHEME (MASTER PLAN)	USES PERMISSIBLE ON APPEAL TO THE COMPETENT AUTHORITY (AMARAVATHI URBAN DEVELOPMENT AUTHORITY)	USES PROHIBITED
(1)	(2)	(3)

All retail and wholesale business and their accessory uses, professional business establishments, offices, banks and financial institutions, commercial entertainments of a transient nature, theatres, service industries not exceeding 20 HPEM, petrol filling stations with garages and service stations public utility buildings, newspaper offices with printing presses, parks and play grounds, contractors plant, warehousing public & private retail & whole sale markets, transport terminals for goods and passengers.	Hotel and transient visitors' homes, temples, mosques, churches and other religious buildings, all clean industries, light industries exceeding 20 HPEM, taxi and scooter stands, storage for perishable and inflammable goods, sports stadia, swimming pools and other recreational uses, hospitals and nursing homes, educational, technical and research institutions.	Dwellings except those of essential watch and ward personnel and agricultural uses, quarrying of gravel sand, clay or stone except for the purpose of development of the area.

A bare perusal of Zoning Regulations to the master plan of Vijayawada Municipality would show that if the area is residential use zone and in no circumstances wholesale business is permissible and such wholesale business is permissible with prior permission of the competent authority if it is a central commercial use zone. However, all wholesale business is permissible if the area is earmarked as general commercial use zone.

When the Government of Andhra Pradesh promulgated Urban Authority Zoning Regulations vide G.O.ms.No.718, dated 30.11.1993, it was ordained that implementation and enforcement of master plan/zonal development plan shall be in accordance with Zoning Regulations in relation to eight (8) zones, which are identified. These are – (i) Residential Use Zone; (ii) Commercial Use Zone; (iii) Industrial Use Zone; (iv) Public and Semi-public Use Zone; (v) transport and Communication Use Zone; (vi) Open space/recreational Use Zone; (vii) Agricultural Use Zone and

(viii) Service Use Zone. Regulation 2.37 defines the terms "occupancy or use group" as "the Principal occupancy for which a building or a part of the building is used for the purpose of classification of a building according to the occupancy, which includes the subsidiary occupancies". The occupancy classification is contained in Regulation 2.37. "Residential building" and "wholesale establishments" are defined as under.

> 2.37. 11. RESIDENTIAL BUILDING: Those shall include any building in which sleeping accommodation is provided for normal residential purposes with or without cooking or dining facilities. It includes one or two or multi family dwellings, hostels, dormitories, apartment houses and flats, and private garages.
>
> 2.37. 12. WHOLE SALE ESTABLISHMENTS: Means establishments wholly or partly engaged in whole sale trade, manufactures, wholesale outlets including retail storage facilities warehouses and establishments engaged in truck transport including transport booking agencies.

Regulation 8 enumerates uses permitted in residential use zone and Regulation 9 contains uses permitted in commercial use zone. The relevant portions of these two Regulations read as under.

8. LANDUSE CLASSIFICATION AND USES PERMITTED:

1. RESIDENTIAL USE ZONE:

8.1.1 USES PERMITTED:

Dwellings: All types, community hall, Police stations, Post Offices, fire station, Post and telegraph offices. Telephone Exchange, Electric sub-station, Government and Municipal Sub-offices, Branch Offices of Banks. Educational buildings (including schools, hostels, religious buildings, Community hall and welfare centers and gymnasiums except trade schools) Nursing homes, Dispensaries, Maternity homes and Hospitals not treating contiguous, diseases or mental patients, Customary home occupations, public parks, play grounds, play fields, gardens, plant nurseries, water supply treatment plants, public assembly halls, cultural centers, Medical centers./Public libraries and museums. Boarding houses bachelor quarters, hostels, clubs, taxi and Scooter stand, Bus terminal railway yards and stations, radio broadcasting studios.

Crematoria, Cemeteries, Play grounds with studio, Stands for Vehicles on hire like taxi and automobiles, Local shops like, Provisions, medical, tailor shops, shops for goldsmiths, blacksmiths, watch and clock Repairs, bicycle rental and repairs, optical glass grinding and repairs, picture framing, radio, T.V, Electrical goods And house hold appliance repairs. Bakeries book binding without dintling plugges two wheeler repairing professional business establishments, flour ills not more than 5 H.P and without chilly powder, battery charging and repairing without hard with employee not more than 9 persons and do not create noise, vibration, and smoke or dust due to power not exceeding 5 H.P EM provided such shops do not face major and arterial roads.

Show rooms for distribution and sale of L.P.F. Gas, Coal fire wood shops with special written permission of the Authority. Petrol filling stations, weigh bridges, Other cottage and service industries which not exceeding 10 HPEM and not involving pollution of any other type depending on circumstances.

9.1 COMMERCIAL USE ZONE:

The following uses are permitted in this zone. Dwellings, Multi-storeyed or apartment houses, retail shops, department stores, lodges, hotels, restaurants and their accessory uses.

Professional business establishments, private office buildings, and colleges, schools, offering general educational courses, libraries, office and Banks.

Parks, Play-ground and other recreational uses, public assembly halls, cultural centers social and welfare institutions.

Clinics, nursing homes, hospitals, dispensaries, treating contiguous diseases and mental patients.

Public utility buildings, temples, mosques, churches and other religious

buildings.

Petrol filling stations and petrol pumps with garages and service stations, weigh bridges.

Flour mills, coffee grinders, dhall grinders and oil rotaries, chillies grinding etc.

Coal and timber storage, taxi and scooter stands, transport terminals etc.

Government Offices, research and social service institutions, circus and public utilities and multi purpose or junior technical schools, polytechnics and higher technical institutions with machinery.

Commercial entertainment of a transient nature, Theaters and cinemas, whole-sale markets, newspaper offices with printing presses, sports stadia, transport terminals for both goods and passengers.

Financial institutions, godowns, warehouses, markets, storage for perishable and inflammable goods.

PART VI

CONSPECTUS OF THE LEGAL POSITION

After referring to the important provisions of various Acts, Rules and Regulations (supra), the following principles would emerge.

1. Under Municipalities Act and Building Rules in Schedule III to the Act read with A.P.Municipalities Layout Rules, Municipal Commissioner cannot grant/sanction building permission unless it is shown that the building permission is sought in the land for a purpose, which is approved in the layout. If any construction is made in contravention of this Principle, it is permissible under law to demolish the building after issuing notice, passing provisional order and passing final order as contemplated under Section 228 of Municipalities Act.

3. In addition to imposing penalties for breach and contravention, and in addition to an order of demolition of the building in contravention of a Zonal Development Plan, it is also permissible for the Urban Authority to take action under Section 43(2) and (3) of Urban Development Act by taking the assistance of a police officer to stop development in breach of the Town Planning Act and master plan/zonal plan.

4. Either under the Municipal Zoning Regulations or Urban Authority Zoning Regulations, the wholesale markets and wholesale business is not permissible in residential use zone or buildings, in such zone. Buildings intended for residential purpose, cannot be converted as premises for commercial purpose, much less for wholesale business or for storage of commodities.

PART – VII

RELEVANT CASE LAW

There is no gainsaying to reiterate that over a period of about six decades, Indian Courts by and large have taken strict view whenever town planning violations are complained. The law and statutes regulating town planning, building construction and municipal administration have been interpreted strictly. Though all the statutes confer the power to exempt any land or any building from the provisions of the legislation, the Courts have held that such power is not available in the matter of urban development. The basis for such judicial decisions hitherto

has been the modern common law principle that community interest should prevail over individual right to enjoy property. Of late, the shift in the legal principle is founded on the right of every citizen to have well balanced ecology and enjoy reasonably standard environment. If planning and development is permitted beyond certain limits, the same would violate the right of a citizen to clean environment, now traceable to Article 21 of Constitution of India. If the surroundings in the area result in squalor unhygienic conditions, the same would be improper municipal functions. If the area in a development plan is earmarked as a green park or common area for entertainment and it is converted for any other purpose, it would be fraud on statute. There are cases where the Courts ordered demolition of huge structures involving millions of rupees. There are cases where the Courts ordered restoration of land under water bodies to ensure nature's ecology and clean environment. There are cases where the Courts have ordered large scale shifting of industries from non-conforming zone to conforming zone keeping in view one and only welfare of the people living in the area. The decisions which support these are galore. But, having regard to the controversy in these cases, it is not necessary to refer to these Judgments except a few.

In **T.Damodhar Rao v S.O., Municipal Corporation of Hyderabad**[9], explaining the importance of regulating development in urban areas under law, this Court speaking through Justice P.A.Choudary, observed as under.

> Under the common law, ownership denotes the right of the owner to possess the thing which he owns and his right to use and enjoy the thing he owns. That right extends even to consuming, destroying or alienating the thing. Under the doctrine of right to choose the uses to which a owner can put his land belongs exclusively to his choice. The right to use thus becomes inseparable from the right of ownership. The thrust of this concept of individual ownership is to deny communal enjoyment of individual property. This private law doctrine of ownership is comparable in its width and extent to the public law doctrine of sovereignty. … … Into the domain of this doctrine of ownership, it is the collectivist jurisprudence of municipal administration that has made its first in roads. But in the recent past the law of ecology and environment has even more seriously shaken its roots. Under the powerful impact of the nascent but the vigorously growing law of environment, the unbridled right of the owner to enjoy his piece of land granted under the common law doctrine of ownership is substantially curtailed.

This Court in **SPEQL v Industries Department, Government of Andhra Pradesh**[10] upheld the Government Order prohibiting industrialization in the catchment areas of fresh water tanks near Hyderabad. The Division Bench reminded the duty of the Court in the following terms.

> There is no manner of doubt that Ecological imbalance is a social problem and considering the impact of the problem on the society, Law Courts ought to rise up to the occasion to deal with the situation as it demands in the present-day context. Law Courts have a special duty since it is part of the society and as such, must always function having due regard to the present-day problems which the society faces. It is now a well settled principle of law that socio-economic condition of the country cannot be ignored and social problems shall have to be dealt with in the way and in the manner called for, since benefit to the society ought to be the prime consideration of the Law Courts.

In **Ajay Constructions v Kakateeya Nagar Cooperative Housing Society**

Limited[11], another Division Bench ruled that no builder can be permitted to pollute the atmosphere of air by letting out offensive material from his premises and when environmental pollution reaches intolerable proportion resulting in health hazards to the residents of the locality, the Municipality and Urban Authorities shall have to take necessary civil and criminal action against the violator.

In **K.R.Shenoy v Udipi Municipality**[12], the Supreme Court *inter alia* considered the question whether a Municipality can sanction building permission contravening Byelaw. In the case before the Supreme Court, the pontiff of Shri Kaniyoor Muth, Udipi constructed Kalyana Mantap/lecture hall after obtaining licence from Municipal Council, Udipi on condition that the building will be used as Kalyana Mantap and shall be subject to provisions of Madras Health Act, 1939 as well as scheme framed under Madras Town Planning Act 1920. Thereafter an application was made for conversion of Kalyana Mantap to use as building for exhibition of cinemas for public entertainment. Udipi Municipality rejected the application on the ground that a cinema theatre could not be permitted under the town planning scheme. An appeal was filed before the Municipal Council, which passed four resolutions granting permission to convert Kalyana Mantap as a place of public resort as well as conversion as a cinema theatre. The appellant challenged these resolutions before the High Court of Mysore which quashed three resolutions but upheld the resolution permitting the conversion of Kalyana Mantap into a cinema theatre. Before the Supreme Court, it was *inter alia* contended that the town planning scheme forbade any cinema building at the place, therefore, the same was invalid. The submission was accepted by the Supreme Court. It was held that sanction given to build by contravening Byelaw would be illegal and inoperative. It is apt to quote the following passage.

> The Municipality acts for the public benefit in enforcing the Scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not posses. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law the jurisdiction of the Courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative (see Yabbicom v. King, (1899) 1 QB 444).

Yet again, the Apex Court observed as under.

> … … An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation the powers of the Municipality the courts will quash orders passed by Municipalities in such

cases.

In **A.P.Gunnies Merchants Association** (supra), a Division Bench of this Court considered the validity of a Government Order directing shifting of trading by gunny bags merchants association from Maharajgunj within thirty (30) days of the order. *Inter alia*, it was urged that State had no jurisdiction to direct the petitioners to shift their place of business. This Court having regard to the provisions of the Environment (Protection) Act, 1986, Section 521 of HMC Act, 1955 and the Air (Prevention and Control of Pollution) Act, 1981, rejected challenge observing thus.

> From the aforementioned provision, it is clear that a licence can be cancelled for creating nuisance. In terms of Article 19(1)(g) of the Constitution of India, the right to carry on business or trade is subject to any restriction that may be imposed by any law in force. The HMC Act, Air (Prevention and Control of Pollution) Act, 1981, and the Environment Act, provide for such regulations. Therefore, the right of the petitioners to carry on business in old and used gunny bags cannot be said to be absolute. … …
>
> … … Since the business carried on by the petitioners is endangering the lives of the people living in the area, more particularly the traders and the public in general, who visit the market day in and day out, as also the workers engaged therein, we are of the opinion, that no fault can be found in the impugned order which directs the shifting of the business of the petitioners from a thickly populated area to a safer place to avoid air and environmental pollution.

In **M.C.Mehta-I** (supra), the case before the Supreme Court was regarding unauthorized industrial activity in residential areas of Delhi. In 1995 Supreme Court took up the case in its PIL jurisdiction and issued orders from time to time directing shifting of industries to conforming areas i.e., industrial areas earmarked for the purpose from non-conforming zones i.e., residential and non-industrial zones. In spite of orders passed by the Supreme Court in various Interlocutory Applications from time to time in shifting and relocating the industries much progress was not made. An application was therefore moved seeking directions to put an end to industrial activity in residential areas, which were seeking regularization of illegal industrial activity. State also renewed the application seeking extension of time. The Supreme Court rejected the application moved by the State Government seeking modification of the order and extension of time. It was held that (i) the land cannot be permitted to be used contrary to the stipulated user except by amendment of the master plan after due observance of the provisions of the Act and Rules; (ii) Inaction by the Government amounts to indirectly permitting unauthorized use which amounts to the amendment of the master plan without following due procedure; (iii) Any prayer for regularization has to be considered not only from the angle of those who have set up industrial units in violation of master plan but also others who are lawful residents since regularization has effect on the entire area, particularly on infrastructure available and any regularization violates the right to life under Article 21 of the Constitution of India; and (iv) the right to have living atmosphere congenial to human existence being a part of right to life, the State has a duty to forge its policy to maintain ecological balance and hygienic environment.

The observations of the Supreme Court are as under.

> … … The State has a duty in that behalf to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Where in the zonal plan, a land is

marked out and reserved for park or recreational purpose, it cannot be allotted for building purpose though housing is a public purpose. Further, it was observed that though the Government has power to give directions, that power should be used only to effectuate and further goals of the approved scheme, zonal plans, etc. and the land vested under the scheme or reserved under the plan would not be directed to be used for any other public purposes within the area envisaged thereunder. … …

… … The land cannot be permitted to be used contrary to the stipulated user except by amendment of the master plan after due observance of the provisions of the Act and the Rules. Non-taking of action by the Government amounts to indirectly permitting the unauthorized use which amounts to the amendment of the master plan without following due procedure.

The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large-scale violations have commenced and continue leaves no manner of doubt that it was not possible without the connivance of those who required to ensure compliance with law and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law-abiders are sufferers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India.

(emphasis supplied)

In **M.I. Builders Private Limited v Radhey Shyam Sahu**[13], Lucknow Nagar Mahapalika/Corporation permitted M.I.Builders to construct underground shopping complex in a historical park called Jhandewala park. A Division Bench of Allahabad High Court (Lucknow Bench) quashed the resolution of Mahapalika permitting such construction. Aggrieved by which the contractors filed Civil Appeal before the Supreme Court. While upholding the decision of the High Court, the Supreme Court ordered dismantling and demolishing of the underground shopping complex as well as restoration of the park. It was observed as follows.

This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. **Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.** As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.

(emphasis supplied)

In **Consumer Action Group v State of T.N.**[14] as many as sixty two (62) orders passed by the Government of Tamil Nadu in exercise of powers under Section 3 of Tamil Nadu Town Planning and Country Planning Act exempting large

number of buildings were challenged. The relevant provisions were also subject matter of the challenge. Though the Supreme Court upheld the validity of two impugned provisions of Tamil Nadu Act, the orders were quashed on the ground that they are arbitrary and without application of mind. The Court noticed the development control rules framed for Madras Metropolitan Area, which provided for division into nine zones and permissible uses of the land in such zones like residential areas, schools, shops etc. The underlying object of framing development rules for various user zones being the avoidance of public inconvenience, prevention of pollution, disorderly traffic and for security reasons, the Supreme Court visualized the following possible consequences of grant of exemption.

> The waiver of requirements of side setback will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight a fire in a high-rise building. The violation of floor space index will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire staircase and other fire prevention and fire-fighting measures would seriously endanger the occupants resulting in the building becoming a veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularisation is likely to spell ruin for any city as it affects the lives, health, safety and convenience of all its citizens.

In **Friends Colony Development Committee v State of Orissa**[15], the Supreme Court explained the importance of planned development of cities in the following terms.

> **In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder.** Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control…… It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.
>
> (emphasis supplied)

In the above decisions, the Supreme Court also laid down that whenever deviations are made by the builders necessary action should be taken to demolish the illegal construction and that no sympathy should be shown and the officials who have connived at unauthorized or illegal constructions should not be spared. The Supreme Court also observed that State Government should think of levying penalty on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating innocent or unwary buyers who were displaced on account of unauthorized and illegal constructions.

In **S.N.Chandrashekar v State of Karnataka**[16] the question before the Supreme Court was whether under Section 14A of Karnataka Town and Country

Planning Act, 1961, change of land use can be accorded for conversion of use from dwelling to commercial for establishment of a hotel/restaurant. The High Court of Karnataka took a view in favour of such conversion, which was reversed by the Supreme Court holding thus.

> The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Regulations. Sub-section (1) of Section 14, as it then existed, categorically stated, that every change in the land use, *inter alia*, must conform to the Outline Development Plan and the Regulations which would indisputably mean that it must conform to the Zoning Regulations. … …
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> … … The provisions of the Act are to be read with the Regulations, and so read, the construction of Sections 14 and 15 will lead to only one conclusion, namely, such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or a restaurant was not permissible both under clauses (1) or (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under Sections 14 read with 15 of the Act. It is precisely for that reason, Section 14-A was introduced.

In nation's capital there were violations of various Municipal Laws, Master Plan and environmental laws in the land use and large number of residential areas and residential properties were converted for commercial purposes. This aspect was subject matter of number of cases before the Delhi High Court. A Full Bench of the Delhi High Court took the view that neither under Delhi Municipal Corporation Act, 1957 (DMC Act) nor Delhi Development Act, 1957 (DD Act), there was any power to seal the property for its misuse. In 1985, the matters were brought before the Supreme Court by way of PIL as well as appeals against the judgments of the Delhi High Court. In **M.C.Mehta-II** (supra), the Supreme Court considered two questions in the background of DMC Act and DD Act. They were: Whether MCD under the DMC Act has power to seal the premises in case of its misuser and Whether Delhi Development Authority under DD Act has similar power in sealing or not. On an analysis of the provisions of DMC Act, a Division Bench of the Supreme Court held that under Section 345A of DMC Act the Commissioner of Municipal Corporation has power of sealing the premises incase of misuse of any premises. On the second question however having regard to the provisions of DD Act, the Apex Court came to the conclusion that under DD Act, there is no power of sealing in case of misuser. While holding thus, the Supreme Court issued the following directions for taking immediate steps to seal residential premises being used for commercial purpose.

(1) MCD shall within 10 days give wide publicity in the leading newspapers directing major violations on main roads (some instances of such violators and roads have been noted hereinbefore) to stop misuser on their own, within the period of 30 days.

(2) It shall be the responsibility of the owner/occupier to file within 30 days an affidavit with Commissioner MCD stating that the misuser has been stopped.

(3) In case misuser is not stopped, sealing of the premises shall commence after 30 days, from the date of public notice, first taking up the violations on roads which are 80 ft. wide and more. All authorities are directed to render full assistance and cooperation. After expiry of 30 days from the date of public notice, electricity and water supply shall be disconnected.

(4) Details of the roads and the violations shall also be placed on the website by the MCD and copies also sent to resident Welfare Associations of the area which should be involved in the process of

sealing of misuser. The Commissioner of MCD shall file an affidavit, within two weeks, in terms of directions contained in this judgment, whereafter directions for constitution of the Monitoring Committee would be effected by the officers authorized by the Commissioner of MCD in consultation with the monitoring committee.

(5) The appropriate directions for action, if any, against the officers responsible for the misuse and for payment of compensation by them and by violators would be issued after the misuser is stopped.

(6) None will tamper with the seals. Any tampering with seal will be sternly dealt with. Tampering with seal will include opening another entrance for use of premises.

(7) It would be open to the owner/occupier to approach the Commissioner for removal of the seal on giving undertaking that the premises would be put to only authorized use.

(8) Particulars of cases where violators may have obtained orders of stay will be filed in this Court by MCD.

(9) MCD shall file monthly status report as to action taken by 15th of each month commencing from 10.4.2006.

(10) In case misuser is not stopped in the premises involved in the civil appeals and special leave petitions, subject to what is stated in this judgment, MCD will take immediate steps to seal those premises soon after expiry of 30 days.

In the above case, the Supreme Court also observed that it is necessary to identify and take appropriate action against the officers responsible for non-implementation of the laws and non-implementation of the orders of the Court and that any misuse of residential premises would cause injury to the residence of the locality as well as to the parties. It is apt to quote the following observations made by the Supreme Court.

> This Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent intervention by court so that the rule of law is preserved and people may not lose faith in it finding violations at the hands of supposed implementers. **The problem is not of the absence of law, but of its implementation**. … …
>
> … … **Considering such large-scale flagrant violations, this Court had to prioritize as to which violations may be taken up first and then issue appropriate directions. In this view, at first instance, directions were issued in respect of shifting of hazardous and noxious industries out of Delhi. Directions were also issued for shifting of heavy and large industries as also some extensive industries. For shifting polluting industries had to be given top most priority. Later, directions were issued for shifting of other extensive industries considering the continued unauthorized use contrary to Master Plan and Zonal Plan, by those industries as well as some other industries continuing in residential/non-conforming areas.**
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> (emphasis supplied)

PART – VIII

CONSPECTUS OF CASE LAW

The following principles of law in the matter of Zoning Regulations and

construction of different types of buildings is well settled. The right of an owner of the land to enjoy his land is not absolute. The same is subject to the law made by the competent legislature in the interest of public. The use of the land earmarked as such in a user zone cannot be permitted to be used for other purpose nor is it competent for the Municipality to regularize such construction. The Municipality or Municipal Corporation has no power or jurisdiction to permit the construction of a building for a specified purpose if the same is not intended in a particular zone. If the Zoning Regulations do not permit the construction of a building for commercial purpose in a residential area, the same cannot be permitted by the Urban Authority even under the provisions of main Act. In such an event, it is always permissible for the Urban Authority to prevent further development or to seal the premises, which is being used for a different purpose. The Court has a constitutional duty to see that the law is implemented and large scale violations are stopped keeping in view the master plan and zonal development plan. If any activity is being undertaken in a non-conforming zone, the violation should be treated sternly and no sympathy should be shown to violators of law. Any development is intended to see that the people living in the area have reasonable access to amenities available and while considering the request for regularization by violators, the authorities have to keep in mind not only the interest of the builders but also the people living in the entire area. If any construction is made unauthorisedly in a non-conforming zone, the same being illegal cannot be compounded and it has to be demolished in accordance with law.

PART – IX

Municipal Ward Nos.1 to 7 of Vijayawada Municipal Corporation are included in I-Town of Vijayawada. As per the master plan prepared prior to coming into force of Urban Development Act (prepared by Director of Town Planning), this area is earmarked as a residential zone. There is no dispute that as per the master plan for Vijayawada except a small portion in wards 6 and 7 in I-Town area, the entire extent is residential area. Most of the petitioners herein as well as a large number of members of the merchants association have their wholesale business establishments in Wards 1 to 5. Therefore, there cannot be any quarrel with the proposition that wholesale business is not permissible in I-Town area. Learned Standing Counsel for Urban Development Authority has placed before this Court the approved Zonal Development Plan of Vijayawada showing the existing land use in I-Town area. A specific averment is made in the counter affidavit of Urban Development Authority to that effect. Though a reply affidavit is filed by the petitioners, the same is not denied.

Whether notice of VGTM Authority is valid?

The merchants association was registered as a Society only with a view to acquire land for construction of wholesale commercial complex with all infrastructural facilities for the commercial complex. It is the case of the Urban Development Authority that after lot of persuasion all the wholesale merchants agreed to move out of I-Town area and so as to facilitate shifting of the wholesale business, the Merchants Association was formed. They acquired agricultural land, got exemption under ULC Act and got necessary sanction for change of land use. Later, the merchants association constructed market complex at Gollapudi and also developed plots with all necessary facilities. Most of the members were allotted shops/plots as per their requirements. Even thereafter the wholesale merchants

and the petitioners did not shift. Merchants Association addressed a letter dated 23.07.2004 requesting the Commissioner of Police to grant time till 15.08.2004. No progress, however, was made for shifting wholesale business. A meeting was convened on 27.11.2004 in the camp office of the District Collector and it was resolved to stop business in I-Town area and more to Gollapudi market complex before 31.3.2005. On that day, a resolution was passed by the merchants association to shift the business to new complex and also to request the concerned Government Departments to take all necessary steps for shifting the business. While enclosing the said resolution, the General Secretary of merchants association addressed a letter to the District Collector and Vice-chairman of Urban Development Authority requesting to take necessary action for shifting of members' shops from I-Town to outskirts of Vijayawada. In response thereto, the Vice-chairman of the Urban Development Authority issued a notice to all the members of the merchants association requesting to shift to Gollapudi market complex within a period of one week from the date of the notice dated 31.3.2005 and members are informed that any default would entail in appropriate action by the District Administration. Having regard to the Zoning Regulations, Vijayawada master plan and the agreement reached between the merchants association on one side and Urban Development Authority/District Administration/Police establishment on the other side, there is no illegality in Vice-chairman or Urban Development Authority issuing such notice.

Whether Rule of notice is complied with?

Learned Counsel for the petitioners in some of the cases submits that some of the members were not given notices before finally threatening coercive action against them and, therefore, the impugned action violates principles of natural justice. This is refuted by the learned Standing Counsel for VGTM Authority as well as Counsel for the merchants association. They submit that all the petitioners have participated in the meetings of the association and when the notice is issued to the Association, there is no necessity to issue further notice. There is force in the submission of the learned Counsel. In **Dr.A.L.N. Prasad v State of A.P.**[17], this Court considered the question whether notice is required to be issued to individual members of the association when the master plan is modified by the Government at the instance of the association itself. The Division Bench referred and relied on the decision in **Daman Singh v State of Punjab**[18] and observed that, "when modification of the plan is proposed by the society of which the petitioners are members, they cannot come forward to say that they had no information, and that when the society was acting for and on behalf of the members, a separate notice was not necessary to the members of the society." Therefore, this Court is not able to countenance the submission made on behalf of the petitioners.

Whether Officials and Police can seal premises?

It is, as noticed above, strenuously contended that there is no power either in the Urban Development Authority or Municipal Corporation to seal a premises being used for a non-conforming purpose. This submission cannot be accepted. This Court has referred to various provisions of HMC Act, Urban Development Act and various Zoning Regulations. Under the provisions of HMC Act, Layout Rules and Building Byelaws made thereunder, a person applying for a building permission is required to specify the purpose for which a building is intended (Sec.428(1) of HMC Act) and if permission is obtained for construction of a residential house, but the same is used for commercial purpose, it would

contravene the provisions of Sections 441 to 443 of HMC Act, in which event the Commissioner can cancel the permission and can demolish construction under Section 636 of HMC Act. Even under provisions of Urban Development Act and Zoning Regulations made thereunder, the use of land or building in a zone otherwise than in conformity with the master plan is prohibited. When development in a non-conforming zone is taken up, the Urban Authority can stop unauthorized development under Section 43 of Urban Development Act and if the development is not discontinued, the Urban Authority can require any Police officer to remove the person by whom the development has been commenced and then the Police officer shall duly comply with the order of the competent authority by removing the person from the place of development (See Secs.43 (2) and (4) of Urban Development Act). Thus drastic powers are vested under HMC Act in the Commissioner of Municipal Corporation and the Urban Authority under the Urban Development Act. There is no reason why these Authorities cannot seal the premises used for commercial purpose in a non-conforming zone and stop the use of the place of development.

In both the legislations referred to the legislature is anxious to see that the development activity and building activity adheres to sound/scientific principles of planned development of the city. The legislature abhors indiscipline, half-hazard and unhealthy use of land for development in urban areas. The anxiety of the legislature becomes very clear when we refer to the provisions in HMC Act as well as Urban Development Act which authorize the competent authorities to request the Police to remove the development taken up in a contravention of Zoning Regulations or stop the use of place of development by a person. Therefore, this Court has no hesitation to hold that the Authorities under HMC Act and Urban Development Act have ample powers to prevent an owner or occupant or servant from using any building or land in a residential area for a commercial purpose and for that purpose can request Police officers to seal premises.

The purpose of sealing is not an end itself. It is for the purpose of makng it safe place for residents in the area and ensure larger public interest. The same is intended to impress upon the owner or occupant of the premises to stop using the land for a purpose in a non-conforming zone and take up the building for any other use. In these cases, the exercise of shifting wholesale business in I-Town area to the outskirts of Vijayawada city – now Gollapudi market complex; has been planned for over a decade. Further, it is only when the merchants association requested the District Administration and officials of the Urban Development Authority, it appears, a request had gone to the Police officers. When the Police officers were trying to discharge their duties as contemplated under the provisions of HMC Act and Urban Development Act, the present writ petitioners are filed. The submissions made by the petitioners, who are wholesale merchants are without any substance and are accordingly rejected.

The requirement that every wholesale merchant should carry on business in the new complex at Gollapudi and prohibition to do so in I Town is reasonable restriction and Article 19(1)(g) cannot be said to have been violated. In recent decision in **State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat**[19], a Constitution Bench of Seven Judges considered the constitutional validity of Section 5 of Bombay Animal Preservation Act, 1954 as amended by Bombay Animal Preservation (Gujarat) Amendment Act, 1994, prohibiting the slaughter of progeny of cow in State of Gujarat. Initially when the offending provision was

challenged, the High Court of Gujarat, struck down the impugned legislation as *ultra vires* the Constitution *inter alia* on the ground that it imposed unreasonable restriction of fundamental rights of the individuals who are butchers by profession and violates Article 19(1)(g) of CoI. In the back ground of the case, the Supreme Court considered the scope of reasonable restrictions that can be imposed under Articles 19(2) to 19(6). Referring to many popular Constitution Bench decisions, the Supreme Court by a majority of 6:1 reversed the Judgment of the High Court of Gujarat. In the majority Judgment, quoted with approval the summation regarding tests of reasonableness given by another seven-Judge Bench decision in **Pathumma v State of Kerala**[20], the Supreme Court held.

> (1) Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. This Court while acting as a sentinel on the *qui vive* to protect fundamental rights guaranteed to the citizens of the country *must try to strike a just balance between the fundamental rights and the larger and broader interests of society*, so that when such a right clashes with the larger interest of the country it must yield to the latter.
>
> (2) *The Legislature is in the best position to understand and appreciate the needs of the people as enjoined in the Constitution*. The Court will interfere in this process only when the statute is clearly violative of the right conferred on a citizen under Part III or when the Act is beyond the legislative competence of the legislature. The Courts have recognised that *there is always a presumption in favour of the constitutionality of the statutes and the onus to prove its invalidity lies on the party which assails it*.
>
> (3) The right conferred by Article 19(1)(*f*) is conditioned by the various factors mentioned in clause (5).
>
> (4) The following tests have been laid down as guidelines to indicate in what particular circumstances a restriction can be regarded as reasonable:
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> (a) In judging the reasonableness of the restriction the court has to bear in mind the directive principles of State policy…
>
> (b) The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirements of the interests of the general public. The legislature must take intelligent care and deliberation in choosing the course which is dictated by reason and good conscience so as *to strike a just balance between the freedom in the article and the social control* permitted by the restrictions under the article.
>
> (c) No abstract or general pattern or a fixed principle can be laid down so as to be of universal application. It will have to vary from case to case and *having regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which must enter into the judicial verdict*.
>
> (d) The Court is to examine the nature and extent, the purport and content of the right, nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit to be conferred on the person or the community for whose benefit the legislation is passed.
>
> (e) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved.
>
> (f) The needs of *the prevailing social values* must be satisfied by

restrictions meant to protect social welfare.

(g) The restriction has to be viewed not only from the point of view of the citizen but the problem before the Legislature and the object which is sought to be achieved by the statute. In other words, the Courts must see whether the social control envisaged by Article 19(1) is being effectuated by the restrictions imposed on the fundamental right. However important the right of a citizen or an individual may be it has to yield to the larger interests of the country or the community.

(h) The Court is entitled to take into consideration matters of common report, history of the times and matters of common knowledge and the circumstances existing at the time of legislation for this purpose.

The petitioners have not specifically challenged any of the provisions to which a reference has been made. Strictly speaking whether the legislation or a subordinate legislation violates Article 19(1)(g), does not fall for consideration. The action of the respondents in making efforts to shift wholesale business from I Town Vijayawada to new market complex is challenged. In such a situation, the question is not whether the impugned executive action is unreasonable. The primary question would be whether the impugned action is within law. As found supra, the action initiated by VMC, VGTM Authority and Vijayawada Police does not in any manner impinge the fundamental rights of the petitioners. Therefore, this Court holds that there is no unreasonable in the Police taking all steps to shift the petitioners to newly constructed wholesale market complex at Gollapudi.

Grievance of Transport Operators

In W.P.Nos.10623 and 10790 of 2005, the petitioners are Daily Parcel Transport Owners Association. It is contended on their behalf that all the petitioners are willing to place the booking office at Gollapudi market complex, but for the purpose of carrying on business, there cannot be any prohibition for their possession to continue in I-Town area. They also submit that even if there is any violation of the provisions of the Urban Development Act at best the Urban Authorities can impose penalty and their premises cannot be sealed by employing Police officers. These submissions are devoid of any merit. This Court has referred to the uses, which are permissible under Zoning Regulations to master plan of Vijayawada Municipal Corporation as well as Zoning Regulations to master plan of VGTM Authority. Under these Regulations, when once an area is earmarked as a residential zone, no transport business or daily parcel service business is permissible. Transport terminals for goods are permissible in a general commercial zone and also permissible in central commercial zone with prior permission of Urban Development Authority. The submission that the Transport/Daily parcel service business does not cause inconvenience in I-Town area cannot be accepted especially when such business is not permissible in residential area. The submission that the authority can only impose penalty is misconceived. If the same is accepted, it would amount to ignoring the provisions of Section 43 of Urban Development Act to which a reference is already made supra. It is brought to the notice of this Court that Vijayawada Daily Parcel Lorry Office Owners Welfare Association, the first petitioner in W.P.No.10623 of 2005 is one of the many associations, which is also actively involved in shifting the wholesale business from I-Town area Vijayawada to Gollapudi market complex. Be it noted, as per Rule IV of the Rules of the Merchants Association, unless and until a person is member of any of the traders associations including the parcel service association, such person cannot become member of the merchants association. This only shows that the decision of the merchants association is

equally binding on the petitioners in these two writ petitions. They were also allotted shops/land in Gollapudi market complex and in spite of number of opportunities, they did not shift to Gollapudi market complex. When the action is initiated by various authorities, they filed the writ petitions raising all untenable grounds. Therefore, their writ petitions are also liable to be dismissed.

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PART–X

Conclusion

The relevant statutes and zonal regulations do not permit any wholesale business in I-Town area, Vijayawada. The merchants association and their members agree with this. They decided to shift their business to the outskirts of Vijayawada. Therefore, viewed from any angle, the petitioners have no right that can be enforced in these writ petitions. They are devoid of merit and are accordingly dismissed. In the circumstances of the case, there shall however be no order as to costs.

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(**V.V.S.RAO,J**)

August 2006.

NOTE:
L.R.Copy be marked.
(By order)
Pln/YS

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[1] (2006) 2 SCC 545
[2] AIR 1985 SC 973
[3] 1997 (3) ALD 449 (DB)
[4] AIR 2001 AP 453
[5] (2004) 6 SCC 588
[6] (2005) 8 SCC 534
[7] (2005) 8 SCC 612
[8] 2006 AIR SCW 979 = (2006) 3 SCC 399
* – Vijayawada Guntur Tenali Mangalagiri Urban Development Authority
[9] AIR 1987 AP 171 (paras 21 and 22)
[10] 1998 (3) ALT 516
[11] AIR 1991 AP 294
[12] AIR 1974 SC 2177
[13] AIR 1999 SC 2468
[14] (2000) 7 SCC 425 = AIR 2000 SC 3060
[15] (2004) 8 SCC 733 = AIR 2005 SC 1

[16] 2006 AIR SCW 800 = (2006) 3 SCC 208

.. **Section 345A Power to seal unauthorized constructions**.- (1) It shall be lawful for the Commissioner, at any time, before or after making an order of demolition under section 343 or of the stoppage of the erection of any building or execution of any work under section 343 or under section 344, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed in the manner prescribed by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on, has or have been sealed, the Commissioner may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed

[17] 1997(3) ALD 449

[18] AIR 1985 SC 973

[19] (2005) 8 SCC 534

[20] (1978) 2 SCC 1